

House Bill 702

By: Representatives Drenner of the 86th, Chambers of the 81st, Mosby of the 90th, Henson of the 87th, and Gardner of the 57th

A BILL TO BE ENTITLED
AN ACT

To amend Chapter 38 of Title 31 of the Official Code of Georgia Annotated, relating to tanning facilities, so as to provide a short title; to define certain terms; to provide for licensing of tanning facilities; to provide for inspections; to provide for revocation or suspension of licenses; to provide for administrative, civil, and criminal penalties; to provide for the adoption of rules; to provide for consumer warnings; to provide for reports on complaints of injury; to provide for parental consent for minors' use of tanning facilities; to provide for variances; to provide for related matters; to provide an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

This Act shall be known as the "Tanning Facilities Regulation Act."

SECTION 2.

Chapter 38 of Title 31 of the Official Code of Georgia Annotated, relating to tanning facilities, is amended by striking Code Section 31-38-1, relating to definitions relative to tanning facilities, and inserting in its place the following:

"31-38-1.

As used in this chapter, the term:

(1) 'CFR' means Code of Federal Regulations.

~~(1.1)~~(2) 'Consumer' means any individual who is provided access to a tanning facility as defined in this chapter.

(3) 'Department' means the Department of Natural Resources.

~~(2)~~(4) 'Individual' means any human being.

~~(3)~~(5) 'Operator' means any individual designated by the tanning facility owner or tanning equipment lessee to operate or to assist and instruct the consumer in the operation and use of the tanning facility or tanning equipment.

~~(4)~~(6) 'Person' means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this state, any other state, or political subdivision or agency thereof, and any legal successor, representative, agent, or agency of these entities.

~~(5)~~(7) 'Tanning equipment' means ultraviolet or other lamps and equipment containing such lamps intended to induce skin tanning through the irradiation of any part of the living human body with ultraviolet radiation.

~~(6)~~(8) 'Tanning facility' means any location, place, area, structure, or business or a part thereof which provides consumers access to tanning equipment. 'Tanning facility' includes, but is not limited to, tanning salons, health clubs, apartments, or condominiums regardless of whether a fee is charged for access to the tanning equipment.

~~(7)~~(9) 'Ultraviolet radiation' means electromagnetic radiation with wavelengths in air between 200 nanometers and 400 nanometers."

SECTION 3.

Said chapter is further amended by inserting a new Code Section 31-38-1.1 immediately following Code Section 31-38-1 to read as follows:

"31-38-1.1.

(a) A person may not operate a tanning facility in this state unless it is licensed under this chapter.

(b) The department shall establish procedures for the issuance and annual renewal of licenses and shall establish annual license and renewal fees and late fees in a reasonable amount.

(c) The department shall inspect or investigate a tanning facility as necessary but at least annually. A tanning facility must have a copy of the facility's most recent inspection report available to the public and conspicuously posted in a location in which the report is clearly visible, not obstructed by any barrier, equipment, or other object, and can be easily viewed by a consumer.

(d) Every tanning facility operating in this state shall conspicuously post a current, valid license obtained under this chapter in a location in which the license is clearly visible, not obstructed by any barrier, equipment, or other object, and can be easily viewed by a consumer.

(e) The department may cancel, revoke, or suspend a license to operate a tanning facility if the licensee:

(1) Fails to pay any fee required by this chapter or by rule;

(2) Owns or operates, or solicits business as, a tanning facility in this state without first procuring a license from the department, unless specifically exempted by this chapter;

(3) Obtains or attempts to obtain a license by fraud; or

(4) Violates any provision of this chapter.

(f) The department may impose an administrative fine not to exceed \$1,000.00 per violation per day for the violation of any provision of this chapter, rule adopted under this chapter, or term or condition of any license issued by the department.

(g) In determining the amount of fine to be levied for a violation, as provided in subsection (f) of this Code section, the following factors shall be considered:

(1) The severity of the violation and the extent to which the provisions of this chapter, the rules adopted under this chapter, or any terms or conditions of any license were violated;

(2) Actions taken by the licensee to correct the violation; and

(3) Any previous violations by the licensee.

(h) The department may institute legal action for injunctive or other relief to enforce this chapter. If a tanning facility or other person violates this chapter or any rule adopted under this chapter, the department may issue a stop-use order to remove a tanning device from service.

(i) The department shall adopt rules as prescribed by Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,' to administer this chapter. The rules may include, but need not be limited to, requirements for training tanning facility operators and employees; definitions of terms; the approval of training courses; safety; plan review; and the design, construction, operation, maintenance, and cleanliness of tanning facilities and tanning devices."

SECTION 4.

Said chapter is further amended by striking Code Section 31-38-3, relating to construction, operation, and maintenance requirement of tanning facilities, and inserting in its place the following:

"31-38-3.

(a) Each tanning facility in this state shall be constructed, operated, and maintained in accordance with the requirements of Code Sections 31-38-4 through 31-38-8.

(b) A tanning facility must:

(1) During operating hours, have an operator present who is sufficiently knowledgeable and trained in accordance with rules of the department in the correct operation of the tanning devices to inform and assist each consumer in the proper use of the devices;

(2) Before each use of a tanning device, properly sanitize that tanning device equipment, including, without limitation, handrails, headrests, and bed surfaces;

(3) Give each consumer on each visit a written warning stating:

1 (A) Not wearing the provided eye protection can cause damage to the eyes;

2 (B) Overexposure causes burns;

3 (C) Repeated exposure can cause premature aging of the skin or skin cancer;

4 (D) Abnormal skin sensitivity or burning may be caused by certain foods, cosmetics,
5 or medications, including, without limitation, tranquilizers, diuretics, antibiotics,
6 high-blood pressure medicines, or birth control pills;

7 (E) Any person who takes a prescription or over-the-counter medication should consult
8 a physician before using a tanning device; and

9 (F) If applicable, it does not carry liability insurance for injuries caused by tanning
10 devices or stating the limits of any liability insurance it carries;

11 (4) Show each consumer how to use suitable physical aids, such as handrails and floor
12 markings, to maintain proper exposure distances recommended by the manufacturer;

13 (5) Use a timer on each tanning device which is accurate for any selected time interval
14 to plus or minus 10 percent; and

15 (6) Limit each consumer to the maximum exposure time recommended by the
16 manufacturer of the tanning device."

17 SECTION 5.

18 Said chapter is further amended by striking Code Section 31-38-4, relating to warning signs
19 to be posted, and inserting in its place the following:

20 "31-38-4.

21 (a) The facility owner or operator shall conspicuously post the warning sign described in
22 subsection (b) of this Code section within three feet of each tanning station and in such a
23 manner that the sign is clearly visible, not obstructed by any barrier, equipment, or other
24 object, and can be easily viewed by the consumer before energizing the tanning equipment.

25 Posting this warning sign does not absolve the facility of any liability.

26 (b) The warning sign required in subsection (a) of this Code section shall use upper and
27 lower case letters which are at least two inches and one inch in height, respectively, and
28 shall have the following wording:

29 (b) The warning sign required in subsection (a) of this Code section shall use upper and
30 lower case letters which are at least two inches and one inch in height, respectively, and
31 shall have the following wording:

32 **DANGER - ULTRAVIOLET RADIATION**

33 ~~-Follow instruction.~~

34 ~~-Avoid overexposure. As with natural sunlight, overexposure can cause eye and skin~~
35 ~~injury and allergic reactions. Repeated exposure may cause premature aging of the skin~~
36 ~~and skin cancer.~~

~~-Wear protective eyewear.~~

~~FAILURE TO USE PROTECTIVE EYEWEAR~~

~~MAY RESULT IN SEVERE BURNS OR~~

~~LONG-TERM INJURY TO THE EYES.~~

~~-Medications or cosmetics may increase your sensitivity to the ultraviolet radiation. Consult a physician before using sunlamp or tanning equipment if you are using medications or have a history of skin problems or believe yourself to be especially sensitive to sunlight.~~

~~-If you do not tan in the sun, you are unlikely to tan from the use of this product.~~

~~MAXIMUM EXPOSURE AT ANY ONE SESSION~~

~~SHOULD NEVER EXCEED 15 MINUTES.~~

~~According to the research and clinical experience of the American Academy of Dermatology, excessive or improper exposure to ultraviolet light can cause harmful changes in the skin and other organs, including skin cancer, cataracts, impairment of the immune system, premature aging, and photosensitivity. These are virtually the same risks associated with outdoor tanning.~~

DANGER, ULTRAVIOLET RADIATION

Follow these instructions:

1. Avoid frequent or lengthy exposure. As with natural sunlight, exposure can cause eye and skin injury or allergic reactions. Repeated exposure can cause chronic sun damage characterized by wrinkling, dryness, fragility, and bruising of the skin or skin cancer.

2. Wear protective eyewear. FAILURE TO USE PROTECTIVE EYEWEAR CAN RESULT IN SEVERE BURNS OR LONG-TERM INJURY TO THE EYES.

3. Ultraviolet radiation from sunlamps will aggravate the effects of the sun. Therefore, do not sunbathe before or after exposure to ultraviolet radiation.

4. Using medications or cosmetics can increase your sensitivity to ultraviolet radiation. Consult a physician before using tanning equipment if you are using medications, have a history of skin problems, or believe you are especially sensitive to sunlight. Women who are pregnant or on birth control who use this product can develop discolored skin. IF YOU DO NOT TAN IN THE SUN YOU WILL NOT TAN BY USING THIS DEVICE.

5. MAXIMUM EXPOSURE AT ANY ONE SESSION SHOULD NEVER EXCEED 15 MINUTES. According to the research and clinical experience of the American Academy of Dermatology, excessive or improper exposure to ultraviolet light can cause harmful changes in the skin and other organs, including skin cancer, cataracts, impairment of the immune system, premature aging, and photosensitivity. These are virtually the same risks associated with outdoor tanning."

SECTION 6.

Said chapter is further amended by striking subsections (a) and (b) of Code section 31-38-8, relating to written reports of injuries, and inserting in their place the following:

"(a) The tanning facility owner or operator shall compile a written report of ~~actual or alleged~~ any injury or complaint of injury from use of tanning equipment within five working days after occurrence or notice thereof. Such report shall be maintained for a period of not less than ~~three~~ four years and shall be available for inspection and copying by any consumer. The report shall include:

(1) The name of the affected individual;

(2) The name and location of the tanning facility and identification of the specific tanning equipment involved;

(3) The nature of the actual or alleged injury; and

(4) Any other information relevant to the actual or ~~alleged~~ complained of injury to include the date and duration of exposure.

This report shall be sent to the department on forms prescribed by the department and a copy of the report shall be provided to the complainant. The department shall send to the federal Food and Drug Administration a copy of any report of an injury occurring in a tanning facility.

~~(b) The tanning facility owner or operator shall not allow minors to use tanning equipment unless the minor's parent or legal guardian signs a written consent form meeting the requirements of this Code section. Such consent form shall be signed by the parent or legal guardian at the tanning facility before the minor may use the equipment or facility. A tanning facility may not allow a minor between the ages of 14 and 18 to use a tanning device unless it has on file a statement signed by the minor's parent or legal guardian stating that the parent or legal guardian has read and understands the warnings given by the tanning facility, consents to the minor's use of a tanning device, and agrees that the minor will use the provided protective eyewear. A minor under the age of 14 must be accompanied by a parent or legal guardian when using a tanning device."~~

SECTION 7.

Said chapter is further amended by striking Code Section 31-38-9, relating to penalties for noncompliance with this chapter, and inserting in its place the following:

"31-38-9.

In addition to any administrative or civil penalties imposed by the department, any ~~Any~~ person who leases tanning equipment or who owns a tanning facility as defined by this chapter who operates or permits to be operated that equipment or facility in noncompliance with the requirements of this chapter shall be guilty of a misdemeanor."

SECTION 8.

Said chapter is further amended by striking Code Section 31-38-11, relating to variances, and inserting in its place the following:

"31-38-11.

Any tanning facility which finds that it is not possible to comply with ~~Code Section 31-38-4~~ the requirements of this chapter may apply to the ~~administrator appointed pursuant to subsection (a) of Code Section 10-1-395~~ department for a variance from the requirements of ~~Code Section 31-38-4~~ this chapter. Any such variance granted by the ~~administrator~~ department shall be in writing and shall be drawn as narrowly as possible."

SECTION 9.

Said chapter is further amended by repealing Code Section 31-38-12, relating to the effect of the chapter on the administrator and the administrator's immunity.

SECTION 10.

This Act shall become effective on January 1, 2006.

SECTION 11.

All laws and parts of laws in conflict with this Act are repealed.